SB CRIMINAL MISC. PETITION NO.554/2004.
Arjun Lal And Ors. Vs. The State of Rajasthan.

Date of order:- 6th December, 2007

HON'BLE MR. JUSTICE RAGHUVENDRA SINGH RATHORE.

Reportable

Mr. Kamal Kant Sharma, for the petitioners.
Mr. Shyam Arya, Public Prosecutor.

This Criminal Misc. Petition under Section 482 Cr.P.C. has been filed against the order dated 1.9.2003, passed by the learned Additional Judicial Magistrate, Kotputali, District, Jaipur in Criminal Case No. 175/2002 State Vs. Arjun Lal & Ors. By the said order, the learned Magistrate, rejected the application of compromise in an offence under Section 326 IPC.

2. Broadly speaking, the relevant facts are that a Criminal Case for the offences under Sections 323,341,326 and 541 was pending before the trial Court. During the pendency of the trial, both the parties, filed two separate applications with regard to compromise having been entered into between them in the case. The learned trial Court, by its order dated 1.9.2003 accepted the applications on the basis of compromise for the

offences under Sections 323,341 and 504 IPC. However, in respect of offence under Section 326 IPC, the prayer of compromise was declined.

3.Being aggrieved of the order dated 1.9.2003, in respect of compromise for offence under Section 326 IPC passed by the trial Court that the present Misc. Petition has been filed by the petitioners.

4. In this petition, firstly, it has been prayed that the order dated 1.9.2003 passed by the trial Court may be quashed and set-aside. Secondly, the applications filed by the parties for compromise for offence under Section 326 IPC may be ordered to be allowed and thirdly, the proceedings pending in the aforesaid Criminal Case before the trial Court may be ordered to be dropped. In other words, the questions which arise for consideration before this Court in the instant case are as follows:-

(i). Can this Court direct the learned trial Court to grant permission to compound an offence, which has been specifically mentioned to be non-

compoundable under the Code of Criminal Procedure?

(ii). Can this Court , in its powers conferred under Section 482 Cr.P.C., quash the proceedings in a case wherein the parties have entered into a compromise but the offence is specificallynon-compoundable under the Code of Criminal Procedure?

5. Learned counsel for the petitioners has argued that even in an offence which is not compoundable, if the parties have entered into a compromise, then the permission to compound the said offence can be granted by this Court. Learned counsel for the petitioner has heavily relied upon the Judgment of the Hon'ble Supreme Court in the Case of **Ramlal And Another Vs. State of J.& K. (1999)2 SCC 213**. He has emphasised upon para 2 of the said judgment and read before me the observations made therein by the Apex Court with reference to para 3 of the Case of **Mahesh Chand And Another vs. State of Rajasthan, 1990 (Supp.) SCC 681**, which are as under:-

> “We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial Court shall permit them to compound the offence.”

The relevant facts of the case of Mahesh Chand (Supra) were that the accused were acquitted by the trial Court but the High Court convicted them for the offence under Section 307 IPC. Though, the said offence was not compoundable under law, however, the parties wanted the Apex Court to treat it as a special case in view of its peculiar facts and circumstances. It may be mentioned here that one of the accused in the said case was a practicing lawyer in the lower Court and there was a counter case arising out of the same incident.

6. Before considering the relevant case law, on the question involved in this case, it is necessary to refer to the relevant provisions of the Code of Criminal Procedure. Section 320 of

the Code of Criminal Procedure, deals with the compounding of the offences.

> “Section 320-Compounding of offences- (1)-The offence punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:-.....
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> (2).The offences punishable under the Sections of the Indian Penal Code (45 of 1860)specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:-.....
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> (6).A High Court or Court of Session acting in the exercise of its powers of revision under Section- 401 may allow any person to compound any offence which such person is competent to compound under this Section.
>
> (8).The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.
>
> (9).No offence shall be compounded except as provided by this Section.”

A perusal of the aforesaid provisions, shows that the offences specified in the 'Table' under Sub-section (1) are compoundable without the permission of the Court. But the offences mentioned in the 'Table' under Sub-section (2) can be compounded only with the permission of the Court. The offences which are not specified in the 'Table' cannot be compounded.

7. The offence punishable under Section 326 IPC is not specified in any of the two 'Tables'. Therefore, the bar created by Sub-section (9) of Section 320 of the Code of Criminal Procedure against the compounding of offences equally applies to it. The language of Sub-section (9) is prohibitory in nature and it creates a complete bar for compounding the offences except for the offences as provided by the Section.

8. The Case of **Ram Lal (Supra)** wherein the Case of **Mahesh Chand (Supra)** had been referred to the Apex Court had ;observed, in para 2, as under:-

> “We cannot accede to the request for compounding in regard to the offence under Section 326 IPC as the same is a non-compoundable offence.”

9. When the Learned counsel for the petitioner, in the case of **Ramlal (Supra)**, had invited the attention to the decision rendered in the Case of **Y. Suresh Babu Vs. State of Andhra Pradesh,(1987)2,JT(SC) 361,** it was observed by the Apex Court that in that very case it has been specifically observed that it “ shall not be treated as a precedent”.

10. The Apex Court had very categorically obversed in para 3 of the Case of **Ramlal (Supra),** that “We are unable to follow the said decision as a binding precedent. Section 320 which deals with “Compounding of offences” provides two tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the order containing descriptions of offences which can be compounded with the permission of the Court by the persons indicated therein. Only such offences as are included in the said two tables can be compounded

and none-else. Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms.”.

“320(9) No offence shall be compounded except as provided by this Section.”

11. Further more, the Apex Court in para 4 observed as under:-

> “It is apparent that when the decision in Mahesh Chand And Another Vs. State of Rajasthan (Supra) was rendered the attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was the attention of the learned Judges was rendered the decision in Y. Suresh Baboo drawn. Hence, those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence, we cannot accede to the request of the learned counsel to permit the same to be compounded.”

12. Therefore, in the Case of **Ramlal (Supra)**, itself, relied upon by the learned counsel for the petitioners, it has been made clear by the Apex Court that the decisions of Y.

Suresh Baboo and Mahesh Chandra (Supra), are not binding. Only such offences which are included in the said two tables under Section 320 Cr.P.C. can be compounded and none-else.

13. The Hon'ble Supreme Court in the Case of **Surendra Nath Mohanty And Another Vs. State of Orissa (1999) 5 SCC 238,** decided by a Larger Bench, while dealing with the same question as in the instant case, held as under:-

> "In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, a complete scheme is provided under section 320 of the Code of Criminal Procedure, 1973. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons, mentioned in column 3 of the said table. Further Sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, Sub-section (9), specifically, provides that "no offence shall be compounded except as provided by this Section". In view of the aforesaid legislative mandate, only the offences which are

> covered by Table 1 or Table 2 as stated above, can be compounded and the rest of the offences punishable under the Indian Penal Code, could not be compounded."

14. Further more, the Hon'ble Apex Court in the Case of **Surendra Nath Mohanty (Supra)**, observed that the decision in the Case of **Y. Suresh Babu (Supra),**is per incuriam. It held as under:-

> "In the Case of **Y. Suresh Babu,** the Court has specifically observed that the said case "shall not be treated as a precedent". The aforesaid two decisions are based on facts and in any set of circumstances, they can be treated as per incuriam as pointed attention of the Court to Sub-section (9) of Section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326."

15. Later-on the Hon'ble Supreme Court in the Case of **Bankat And Another Vs. State of Maharashtra (2005) 1 SCC 343,** reiterated the aforementioned principles and held that in view of Sub-section (9) of Section 320 Cr.P.C., which

is a legislative mandate, only the offences which are covered by tables 1 and 2 provided under Section 320, can be compounded and the rest of the offences punishable under the Indian Penal Code cannot be compounded.

16. Therefore, the Apex Court had followed the above referred Judgments, of **Ramlal (Supra),** and **Surendra Nath Mohanty (Supra)**, and held that the Case of **Mahesh Chand (Supra) and Y. Suresh Babu (Supra),** are per incuriam. The Hon'ble Supreme Court had held in para 14 of the Case of **Bankat (Supra),** as under:-

> "We reiterate that the course adopted in Y. Suresh Babu and Mahesh Chand case was not in accordance with law."

17. The Apex Court had again, in the Case of **Badrilal Vs. State of M.P. (2005)7 SCC 55,**wherein a joint petition of compromise was filed in an offence under Section 307 IPC, held that a compromise cannot be recorded in such a case. In para 4 of the said Judgment, it was

held as under:-

> “A joint petition of the compromise has been filed on behalf of the parties, in which prayer has been made for recording the compromise. The offence under Section 307 IPC is not a compoundable one, therefore, compromise cannot be recorded but at the same time it is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of about 14 months and there is no allegation that he assaulted the deceased . In the facts and circumstances of the case, we are of the view, that end of justice should be met in case, the sentence of imprisonment awarded against the appellant by the trial Court and reduced by the High Court in further reduced to the period already undergone.”

18. In a case relating to the offence under Section 326 IPC, it was very categorically held in the Case of **Jetha Ram And Others Vs. State of Rajasthan (2006)9 SCC 255** by the Apex Court that the offence under Section 326 IPC is not compoundable, as such, it is not possible to record the compromise.

19. In regard to the question as to whether this Court can direct the trial Court to grant permission to compound the offence which is a specifically non-compoundable offence under the Code, a Full Bench decision of this Court in the Case of **Mohan Singh And Others Vs. State 1993 (3) WLC (Raj) 569** had directly answered in the negative. The Full Bench in the said case was also considering the offence of section 326 IPC and held in view of provisions contained in Sub-section (9) of Section 320 of the Cr.P.C the High Court cannot permit to compound the offence which is not compoundable under Sub-section (1) or Sub-section (2) of Section 320 Cr.P.C.

20. It is also a settled principle of law that the inherent powers of this Court under Section 482 Cr.P.C. should not be exercised against the express bar of law engrafted in any provisions of the Code of Criminal Procedure. Therefore, the exercise of powers by this Court for quashing of the criminal proceedings for the reason that the parties have settled their

for quashing of the criminal proceedings for the reason that the parties have settled their dispute out of the Court, is not at all permissible and this would tentamount to circumventing the bar created under Sub-Section (9) of Section 320 Cr.P.C.

21. It would be relevant to mention here that Section 321 of the Code of Criminal Procedure provides for dealing with a situation, as arising in this case. In a case involving non-compoundable offence and the parties have entered into a compromise, there is no likely-hood of evidence forthcoming against the accused persons; or likely-hood that the witnesses will be turning hostile or it would not be in the interest of any one to continue such prosecution, then the Public Prosecutor, who is in-charge of the case can withdraw from the prosecution with the consent of the Court. It is for the learned Public Prosecutor to consider and decide about the withdrawal from the prosecution or not by considering as to whether it would be fruitful, just and proper to continue with the prosecution

and it is not for the law Courts to allow the parties to do what has been specifically prohibited under the Code of Criminal Procedure from doing so.

22. Therefore, in my considered opinion, there is no reason for this Court to exercise its inherent powers conferred under Section 482 of the Code of Criminal Procedure in this case and the prayer made by the petitioners, for the reasons mentioned above, deserves to be rejected. The order impugned passed by the learned Magistrate, dated 1.9.2003, is in accordance with law and does not call for any interference by this Court.

23. Resultantly, the Criminal Misc. Petition is dismissed being devoid of any merit.

(Raghuvendra S. Rathore),J.

Bhatt